

BEFORE THE STATE **BOARD** OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RUSSELL R. STEPHENS, JR.) No. **84R-760**

Appearances:

For Appellant: Russell R. Stephens, Jr.,
in pro. per.

For Respondent: Michael R. Kelly
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Russell R. Stephens, Jr., for refund of personal income tax in the amount of **\$1,663** for the year 1981,

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The issue in this appeal is whether appellant was a resident of California for tax purposes during the year 1981.

Appellant is a single taxpayer who first came to California in May 1978 and continued to reside here for the following 2 1/2 years. In December 1980, appellant was living in La Jolla and working at the San Diego offices of Hope Consulting Group when he signed an employment agreement with a company that provided planning, design, and construction management services in the Kingdom of Saudi Arabia. The company, known as Hope/VTN, was a joint venture enterprise between two California corporations: Frank L. Hope & Associates Overseas, Inc., and VTN International, Inc. Under the terms of his contract, appellant agreed to work in Saudi Arabia as an area manager for the company for an 18-month term beginning in December 1980 and ending in June 1982.

When he agreed to work in the Middle East, appellant owned his condominium residence in La Jolla. Based upon his belief that the residence could not be sold at a fair price due to high interest rates for home mortgage loans, appellant retained ownership of the condominium and leased it during his absence from this state. While in Saudi Arabia, appellant was afforded room, board, and a motor vehicle at the expense of the company. During this 18-month period, appellant remained a registered voter in California as well as the owner of an automobile registered in this state; He obtained a Saudi Arabian driver's license but kept his California driver's license. Similarly, appellant opened new bank accounts in Saudi Arabia but maintained his checking and saving accounts in California.

In July 1982, appellant returned to California after the expiration of the term of his employment agreement with the joint venture company. Appellant then resumed employment with Hope Consulting Group by first working for a brief period at the San Francisco office. Sometime later in 1982, appellant was transferred back to the San Diego office of Hope Consulting Group.

In April 1983, appellant filed a claim for refund of taxes paid in 1981, contending that during the year in question he was not a resident subject to California personal income tax. Respondent denied the claim based on its determination that appellant was a California domiciliary who was out of this state for a

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temporary or transitory purpose. Appellant thereupon filed a timely appeal with this board.

Section 17041 imposes a personal income tax upon the entire taxable income of every resident of this state. Subdivision (a)(2) of section 17014 defines the term "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose."

Our initial inquiry is whether appellant was a domiciliary of California for the year 1981. "Domicile" has been defined as "the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning . . ." (Whittell v. Franchise Tax Board, 231 Cal.App.2d 278, 284 [41 Cal.Rptr. 673] (1964).) An individual may claim only one domicile at a time. (Cal. Admin. Code, tit. 18, reg. 17014, subd. (c).) 'In order to change one's domicile, a person must actually move to a new residence and intend to remain there permanently or indefinitely. (In re Marriage of Leff, 25 Cal.App.3d 630, 642 (102 Cal.Rptr. 195) (1972); Estate of Phillips, 269 Cal.App.2d 656, 659 [75 Cal.Rptr. 301] (1969).) One's acts must give clear proof of a concurrent intention to abandon the old domicile and establish a new one. (Chapman, Superior Court, 162 Cal.App.2d 421, 426-427 [328 P.2d 23] (1958).)

Based upon the record in this appeal, we find that appellant left this state in December 1980 as a California domiciliary and remained domiciled here during the following year. At the time of his departure, appellant had permanent connections in California in the form of real estate ownership, bank accounts, and automobile and voter registrations. Appellant did not abandon these contacts but continued to maintain them while abroad. **Moreover**, even though he did establish links in Saudi Arabia, appellant has not shown that he intended to stay there on a permanent or indefinite basis.

Since we have found that appellant was domiciled in this state, he will be considered a California resident if his absence was for a temporary or transitory purpose. Respondent's regulations provide that whether a taxpayer's presence in or absence from California was for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal. Admin.

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Code, tit. 18, reg. 17014, subd. (b).) The regulations explain that the underlying theory of California's definition of **"resident"** is that the state where a person has his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18; reg. 17014, subd. (b).) Consistently with these regulations, this board has held that the contacts which a taxpayer maintains in this and other states are important objective indications of whether his presence in or absence from California was for a temporary or transitory purpose. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Anthony V. and Beverly Xupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In cases **such** as the present one, where a California domiciliary leaves the state for business or employment purposes, we have considered it particularly relevant to determine if the taxpayer substantially severed his **California** connections upon his departure and took steps to establish **significant connections** with his new place of abode, **or** if he maintained his California connections in **readiness** for his return. (See Appeal of David A. and Frances W. Stevenson, Cal. St. Bd. of Equal., Mar. 2, 1977, and the cases **cited** therein,)

Upon examination of all relevant factors in this appeal, we conclude that appellant's absence from California was for a temporary or transitory purpose. First, appellant asserts that he "was a resident of Saudi Arabia by a written contract." (Appeal Ltr. at 1.) The employment agreement, however, is **the** very evidence which convinces **us that** appellant was only a sojourner in that country. The agreement limited appellant's assignment in Saudi Arabia to an 18-month term with a specific termination date. In addition to a basic salary, the agreement provided for a **20-percent** bonus that was to be paid when appellant successfully completed the term of the contract and returned to the United States. Appellant's employer agreed to furnish round-trip air transportation to and from Saudi Arabia, but prohibited the shipment of any unaccompanied air freight to Saudi Arabia. **Moreover**, the contract stipulated that appellant be provided an air fare allowance to permit him to take vacation leave in San Diego during the term of his assignment. Thus, it is clear to us that appellant and Hope/VTN as parties to the employment agreement never contemplated that the job assignment in Saudi Arabia was to be for a number of years or for an indefinite period of substantial duration.

Second, the record does not reveal that **appellant established** any significant connections in **Saudi**

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Arabia. While he did obtain a driver's license there, appellant was provided housing accommodations, meals, and an automobile at the expense of the company. These arrangements were apparently a matter of job convenience. Appellant mentions that he procured a two-year resident visa in Saudi Arabia. Notwithstanding the fact that the employment agreement called for a resident visa, we are not concerned with whether or not appellant may have been treated as a resident by the laws of a foreign jurisdiction but rather his proper classification under California law. (Appeal of Richards L. and Kathleen K. Hardman, supra.)

Third, as we indicated in our discussion hereinabove on the issue of domicile, appellant maintained financial and personal connections with this state during his ~~absence~~. The ~~most significant of these contacts~~ was the continued ownership of the condominium in La Jolla. Appellant leased the residence while he was in Saudi Arabia, but we observe that the leasehold terminated when appellant returned to California. Furthermore, while appellant states that when he executed the employment agreement he did not have any guarantee that he could regain his former job at the termination of the contract, he returned to San Diego to work again for Hope Consulting Group shortly after he finished his ~~overseas~~ assignment with the joint venture company. The evidence thus suggests that these California connections were maintained in readiness for appellant's return to this state within a relatively short period of time.

In conclusion, we hold that appellant went to Saudi Arabia for a temporary or transitory purpose and retained his connections within this state in the interim. Accordingly, respondent's determination that appellant was a resident of California during 1981 must ~~be~~ sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Russell R. Stephens, Jr., for refund of personal income tax in the amount of \$1,663 for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of July , 1985, by the State **Board of Equalization**, with Board Members Mr. **Dronenburg**, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr. , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Richard Nevins , Member
Walter, Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9